SUPPLEMENTAL TESTIMONY OF TOM FALIK, ON BEHALF OF THE CONNECTICUT ASSOCIATION OF HOME CARE REGISTRIES REGARDING SB-393 AAC DOMESTIC WORKERS

My name is Tom Falik. I am Chief Operating Officer of Euro-American Connections, LLC, and Euro-American Homecare, LLC, and I am President of the CT Association of Home Care Registries (CAHCR). At the request of Senator Gomes at the recent Public Hearing on SB-393, I am submitting Supplemental Testimony with some suggestions for revising this Bill.

It seems as though it is quite difficult to find consensus on this Bill, due to the disparate positions of the parties involved. CAHCR believes that the issue of protecting domestic workers is too important to let another year pass without making substantial progress on this issue. We are therefore proposing the following framework for a Bill, in an attempt to find the required consensus.

CAHCR proposes that the following principles underlie any attempt to bring forth a Domestic Workers Bill of Rights:

1. Any Bill of Rights should cover all domestic workers. Domestic Workers in State-funded programs should not be exempted. If State government is not willing to abide by obligations created in a Domestic Workers Bill of Rights, these obligations should not be imposed on individuals, families or homecare providers.
2. The Domestic Workers Bill of Rights should not be bogged down in distinctions between employees and independent contractors. Some domestic workers are undoubtedly independent contractors, but they should also be covered by appropriate requirements. Therefore, the obligation in this Bill of rights should apply to all "domestic workers", including independent contractors, and not just employees.
3. The Bill of Rights should not be a vehicle for undermining the registry business model. Registries serve a valuable role in CT in the provision of care for seniors and people with disabilities. Registries are willing to be subject to appropriate statutory and regulatory requirements, as long as these requirements (1) do not undermine the registry business model, and (2) are not discriminatory against registries.
4. The recent changes to the Federal FLSA Regulations are putting a huge burden on elder care in CT. All overtime exemptions have been denied to employee-based homecare agencies, but some are still available to individuals and families, and registries can help individuals and families take advantage of these exemptions. The Domestic Workers Bill of Rights should not impede individuals and families from taking advantage of the remaining exemptions, nor impede registries from assisting individuals and families in this process.

With these principles in mind, CAHCR would make the following comments on the provisions of SB-393:

Sec. 1. The minimum wage protection should be extended to every "individual employed or permitted to work in domestic service in or about a private home". There should be no reference to an "employer", so that this definition will be broad enough to cover persons engaging independent contractors to provide domestic services.

Sec. 2. The notice provisions should apply to anyone engaging a person to provide domestic services, not just employers. These notice provisions should be imposed on individuals only if the DOL provides a simple and understandable notice template that individuals and families can use.

Sec. 3. There is no problem changing the requirement for Workers Comp to replace the 26 hour/week threshold with $1,000/quarter. This will not, and should not, change current law which provides:

a. "Sole proprietor" caregivers are not covered by WC unless they elect into it; and
b. Independent Contractors are not covered by WC.

WC for individual employers in CT is very expensive ($3,300-$3,800/yr. for live-in) and can only be obtained from the Assigned Risk Pool. In PA, this is about $1,300/yr., but in this budget year, it does not seem feasible for CT to adopt a more affordable workers comp program for individuals To protect consumers affordably, consideration should be given to a requirement that any domestic worker not covered by WC (including IC's) must provide a statutorily-established level of Occupational Accident Insurance and general liability insurance.

Sec. 4. The reduction in the threshold from 3 workers to 1 is appropriate, but the language should be broad enough to cover non-employee domestic workers. Also, the obligation of CHRO to expand coverage in this manner should be imposed on CHRO only if they are assured to receive the additional budget to be able to administer these claims.

Sec, 5. This provision is over-reaching. Live-in caregivers take 7-day positions because they include a place to live that the caregiver might not otherwise have. The State, homecare providers and most individuals hiring caregivers cannot afford this additional cost, and should not be so penalized.

Sec. 6. The exclusion for State-funded programs from the definition of "domestic worker" should be deleted. If obligations are imposed on families and small businesses, they should also apply to State-funded programs. The reference to Chapter 567 of the C.G.S. (unemployment compensation) in Subsection 6(2) should be deleted, and this definition should only be for purposes of Sections 7 to 12 of this

statute. The definition of "live-in domestic worker" should match the Federal FLSA definition.

Sec. 7. Requiring all full-time domestic workers to receive 15 days of paid leave, and part-time domestic workers (no matter how part-time) to receive 9 days of unpaid leave is over-reaching and not affordable for the State, small businesses or individuals and families. If the State does not pay it, neither should anyone else.

Sec. 8. Some privacy protections for domestic workers may be appropriate, but these requirements are over-reaching. The rights of the live-in domestic workers must be appropriately balanced with the property rights of homeowners and the needs of the later to maintain and protect their property and prevent illegal or inappropriate activity on their property. Homeowners should have no fewer rights and protections regarding communications from their homes than do other employers, with respect to communications from their businesses. Homecare providers should not be held accountable for inappropriate actions by homeowners regarding property rights or communications, since the homecare provider has no control over these premises.

Sec. 9. Statutory notice of termination or severance payments are not appropriate. The reasons for ending caregiving assignments are numerous, including poor job performance and death or institutionalization of the person receiving care, and should not all incur such a penalty. This type of requirement does not apply to other industries.

Sec. 10. This provision is appropriate.

Sec. 11. The obligations to administer labor disputes under this statue should be imposed on the Labor Department only if appropriate funding for these activities by the Department is assured by this legislation. Section 11(f) is over-reaching. An employee-based agency or registry should not be liable for acts of its client that the agency or registry do not control.

Sec. 12. Subsections (a) and (b) of Section 12 are generally appropriate, if funding is available, but should cover persons engaging domestic workers, not just employers. Subsection (c) is over-reaching and unwise. If the state is funding the complaints under the statute, and not the claimants or non-profit supporters or their attorneys, there would be a huge increase in claims, including frivolous claims.

I hope that these recommendations are helpful in finding common ground on these important issues. If it would be helpful, CAHCR and I would be glad to work with Labor Committee representatives and/or other stakeholders on these issues. I can be reached at tomfalik@homecare4u.com or (860) 829-0208.